IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 352 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHUPENDRAKUMAR KANTILAL SONI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 352 of 1999

MR VIJAY PATEL FOR M/S HL PATEL ADVOCATES for Petitioner No. 1

MR HL JANI ADDL PUBLIC PROSECUTOR for Respondent No. 1

..... for Respondent No. 2-4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/06/2001

ORAL JUDGEMENT

#. Heard Mr.Vijay Patel, learned advocate appearing on behalf of M/s H.L.Patel Advocates for the petitioners and Mr.H.L.Jani, learned APP appearing on behalf of the respondents so also the concerned investigating officer DySP CID Crime Mr.V.B.Joshi also remained personally

present with all relevant record before this Court.

#. In the present petition, RULE has been issued by this Court on 13th December, 2000 and thereafter on 29th November, 2000 this Court has passed order with direction to the respondent to place on record the order of Judicial Magistrate concerned dated 4th March, 1999 on the record of this Special Criminal Application on the next date and further to make a statement as to what is the result of the further investigation in the matter. Similarly, again this Court has passed order on 20th June, 2001 directing the respondent No.3 - Deputy Superintendent of Police, CID Crime, Vadodara Division should remain present before this Court on 27th June, 2001 at 11.00 a.m. with all the relevant papers including the report and also the report of the investigation subsequent to 4-3-1999. On behalf of the respondent No.3, one Mr.S.S.Chauhan, Deputy Superintendent of Police, CID Crime, Vadodara Division has filed affidavit dated 13th October, 1999 which is on record.

#. The brief facts of the present petition are that on 3rd November, 1996 the petitioner's mother, daughter of petitioner No.2 and son of the petitioner No.1 were brutally murdered and the complaint in respect of the same was filed without mentioning the names of the accused as the same was not available with the petitioners. The said complaint came to be registered as Devagadh Baria Police Station C.R. No.I-213 of 1996 under Section 302, 457, 460 and 114 of the IPC. It was also mentioned in the complaint about looting of gold and silver ornaments worth Rs.21 lacs. The petitioner is an employee of State Bank of India. Since there was an atmosphere of fear, on 22nd November, 1996, the Employees Union of the State Bank of India gave a memorandum to the Collector, Panchamahal District. That on 11th November, 1996, the inhabitants of Devagadh Baria gave a representation to IG, CID Crime, pointing out certain elements who might have been involved in the crime, however, no investigation has been proceeded in its correct direction. Thereafter, on 4th December, 1996, a letter was written by the Member of Parliament Shri Somjibhai Damor to then Chief Minister Shri Shankarsingh Wagehla. However, since two children from S.R.High School and M.C.Modi High School were murdered and the school boys had gone on indefinite hunger strike from 1st December, 1996. The DSP, Panchmahals issued a letter dated 4th December, 1996 to call off the said strike. The strike was called off after six days on receiving promise by one of the Ministers from Panchamahals

District, namely Shri C.K.Raulji on promise that the police will trace out the accused within one month. Prior to that, the petitioner No.2 had addressed a letter on 13th November, 1996 to IGP, CID Crime, showing names of particular persons and named them in the application so as to assist the investigation. The petitioner No.2 also vide his letter dated 19th November, 1996 had given more information to the concerned investigating officer. That on 21st November, 1996, a letter was given with specific particulars in detail to the DSP, Panchmahals with a view to assist investigation. The petitioner also gave another detailed letter dated 23rd December, 1996 to the DIG, CID Crime Branch wherein the persons on whom the doubt was raised. Thereafter, investigation was transferred from local Crime Branch to Dy.SP, Panchamahals, Dahod range. Thereafter, the petitioner No.2 addressed a letter dated 21st December, 1996 to the Hon'ble Chief Justice of this Court stating all the facts about unsatisfactory investigation and prayed for interference. However, the concerned Minister Shri C.K. Raulji submitted his resignation, but the same was not accepted at that relevant time. Therefore, according to the petitioner, they were frustrated, had taken step for self immolation and therefore a letter was handed over to then Home Minister Shri Vipul Chaudhari stating that the same in the month of January, 1997. The police had come to them and convinced that an effective investigation will be carried out and in the forth week of January, 1997, the investigation was transferred to Dy.SP, CID Crime, Vadodara, however, nothing was proceeded any further.

#. That on 8th May, 1997 the petitioner No.2 made an application to the Addl.DIG, CID Crime, Ahmedabad stating all the facts and the said authority informed the petitioners that the information given by the petitioner No.2 was forwarded to the Dy.S.P., CID Crime, Vadodara vide letter dated 12th May, 1997. However, by letter dated 28th May, 1997 the petitioners had given names of two of his relatives against whom doubt was raised, however, the said facts were disclosed to the concerned relatives by the concerned police officer. The petitioner had also given information that the person against whom the petitioners had doubt about involvement in commission of the crime were arrested by the Maharashtra police. Therefore, the petitioner No.2 vide his letter dated 17th November, 1997 had given more information to the officer concerned. Thereafter the petitioner had made request and on request being made by the petitioner, the CID crime branch made an application to the JMFC, Devgadh Baria to issue transfer order of

Kishan Swarup, Gopal Sharma, Dilip Shantilal Kachhia and Madrasi Narayan Adviasi, however, nothing is proceeded further. Thereafter the Hon'ble Chief Minister ordered his office to look into the matter and to hand over the investigation to Mr.Pande, Dy.IGP, CID Crime. However, Mr.C.J.Thakkar, Special Secretary to the Chief Minister assured him to do the needful in the matter, however, no result was there and no progress has been made in the case. Therefore, on 10th December, 1998 the petitioner No.1 had made an application to Shri Tuteja, IGP pointing out involvement of few other persons of Balasinore, who are in the custody of Kohlapur Police of Maharashtra State, however, nothing has been investigated so far. It is further case of the petitioner that the Chief Minister was given a representation during his visit to Panchmahals and his Special Secretary has acknowledged the said representation. The petitioner No.2 again addressed a letter to the Secretary to the Hon'ble Chief Minister on 1-2-1999 reminding about the case as there was no result forthcoming. However, the State Government has declared an award of Rs.50,000/- for anybody gives the clue or finding out the accused of the case, however, nothing has been done so far. The information and details furnished by the petitioners have been passed on to the other side and the investigation is not at all progressing in the right direction and there is total inaction and lacking in the investigation on the part of the respondents. Therefore according to the petitioner, some action could have been taken against certain persons arrested by the Maharashtra police, however, despite request from the petitioner, the investigating authority has determined to file"A" Summary report in this regard. However, "A" summary report has been submitted by the concerned investigating officer before the concerned JMFC on 4th March, 1999 which has been accepted by the concerned Magistrate, Devgadh Baria on condition to continue the investigation. The concerned Investigating Officer has shown "A" summary report to this Court as well as the order passed by the concerned Magistrate, Devgadh Baria. There is nothing on record pointing out by the investigating officer that as to what happened after 4th March, 1999. In light of this fact, the petitioner requested and prayed before this Court to transfer the investigation of the offence in respect of Devgadh Baria Police Station C.R. No.I-213 / 1996 under Section 302, 457, 460 and 114 of the IPC to the Central Bureau of Investigation, New Delhi and the Central Bureau of Investigation may be directed to taken over the investigation papers. The petitioner has produced on record all the relevant papers which are referred to hereinabove.

#. Learned APP Mr.H. L.Jani appearing on behalf of the respondent has submitted that a detailed affidavit in reply has been filed on behalf of the respondent No.3 in respect of the allegations which have been made against the concerned officer.

#. However, Mr.H.L.Jani, learned APP appearing on behalf of the respondent - State has referred to the affidavit in reply and pointed out that all sincere and effective steps have been taken on each and every occasion by the concerned investigating officers and not only that but taking into account all the assistance of the petitioner, investigation was carried out but ultimately the result is nil as no accused has been found out by the concerned investigating officer. Therefore, Mr.Jani, learned APP has relied upon the detailed affidavit in reply filed on behalf of the respondent No.3 and submitted that inspite of the sincere efforts made by the Investigating Officer, they are not able to find out the accused and therefore there is no inaction on the part of the investigating officer and as such there was no negligence on the part of the concerned investigating officer which requires any interference of this Court to direct transfer of the investigation to other independent agency.

#. I have heard submission of learned advocates appearing on behalf of the parties. According to the submission advanced by Mr.Vijay Patel, learned advocate for the petitioner, all the averments made in the reply are definitely creating some doubts against the investigation. He submitted that inspite of the fact that transfer warrant was obtained against the suspect persons namely Kishan Swarup, Gopal Sharma, Dilip Shantilal Kachhia and Madrasi Narayan Adivasi at Ahemadnagar even though they were not brought over but on the contrary the concerned Investigating Officer has visited Ahemadnagar and at Ahemadnagar some interrogation was made and this is how, the investigation was not proper and no proper interrogation was conducted by the concerned investigating officer that too after obtaining transfer warrant in respect of three suspected persons. He also further submitted that the suspected persons, details was duly provided by the petitioner vide his letters on 21st November, 1996 and 23rd February, 1997 but except two persons were interrogated and no other persons were interrogated. It is further submitted that there was no reason given by the investigating officer as to why though names of suspected accused viz. [1] Gopalbhai Ramanlal Soni, [2] Salim Shaikh, [3] Kishnkumar Sharma, [4] Ishwar Mera [Bhoi], [5] Mohmad Driver, [6]

Husen Driver, [7] Karmsinbhai Gopalbhai Patel and Ravjibhai Becharbhai Patel, [8] Tinu Chokshi and [9] Laliyo Soni were though specifically given, no clue was found out. According to the Investigating Officer, suspect Kishan Sharma was interrogated by Shri Damor, Dy.S.P. on 21st July, 1997 and suspect Gopal raman Soni was interrogated by DySP, Head Quarter on 26th November, 1997 and suspects Salim Shaikh and Ishwarbhai Nanabhai and Mohamad Driver and Tinu Chokshi @ Champakbhai Rajnikant Vania were interrogated by PSI, T.F. Godhara, however, during the investigation also no fruitful result could be obtained by the investigating officer. In short, the affidavit says that inspite of putting sincere and best efforts to trace and find out the culprit involved in the case, could not be traced out nor anyone was arrested.

#. This Court has also perused "A" summary report shown to this Court prepared by the Investigating Officer and even the entire report, in brief, it is mentioned that after making sufficient and sincere efforts by the Investigating Officer, no fruitful result has been obtained and therefore "A" summary report has been submitted in the case. However, in light of the facts and circumstances stated hereinabove, it is very painful to note that the petitioner who has lost his three family members on that fateful date on 3rd November, 1996 and virtually more than 4 years, have already been elapsed the petitioner is not able to see the result of the investigation. Reluctantly, it is remind here that it is the duty of the State Agency to see that proper investigation in a proper manner is required to be carried out to reach to the route of the offence to put the real culprit behind the bar. But here in the case on the hands, though the petitioner has substantially assisted investigating agency by giving number of applications to the concerned authority and even too the apex body of the administration by clearly giving names of the suspect persons, however, the method which has been adopted by the Investigating Agency, is not at all praiseworthy and it is felt that the investigation does not seem to have carried out in right direction and therefore, this Court is of the opinion that there was some inefficiency on the part of the investigation in not finding out the accused or the real culprit who has committed this heinous crime. Ultimately, the petitioner in such brutal crime, has lost his three family members and the valuables of more than Rs.21 lacs and under such dismantle situation on the part of the petitioner, feelings and apprehension of the petitioner requires to be taken into account by this Court. It is also apparent

on the face of the record that immediate complaint was filed and despite this, the real culprits are not yet traced out nor any clue to reach the route of the crime that too after lapse of these many years but on the contrary, "A" Summary report has been filed. However, it is noted that the report was submitted and accepted subject continuation of investigation, but even today, as such no result on record. It is again reiterated that it is the duty of the investigating agency to adopt right method of investigation so as to reach to the route of the crime to put the real culprit behind the bar. After all the crime is committed by the persons and the petitioner has lost his invaluable three lives of his family and the property worth more than Rs.21 lacs.

#. The Apex Court, while dealing with a case reported in PUNJAB AND HARYANA HIGH COURT BAR ASSOCIATION, CHANDIGARH THROUGH ITS SECRETARY VS. STATE OF PUNJAB AND OTHERS reported in AIR 1994 Supreme Court 1023 having similar kind of facts and circumstances, when a practising lawyer, his wife and child were abducted and murdered. The lawyers fraternity were not satisfied with the police investigating and demanded justice judicial enquiry and ultimately the Apex Court has directed investigation by specialized agency like the Central Bureau of Investigation [CBI] and the CBI was directed to taken up the investigation of the case. Some important observations of the Apex Court in the aforesaid decision made in para- 9 & 10 are reproduced as under :-

"9. We have heard Mr.Rajinder Sachhar, learned counsel for the appellant. We have also heard Mr.G.K.Chatrath, learned Advocate General for the State of Punjab. It is not necessary for us to go into the question as to whether the writ petition before the High Court was for bringing an end to the lawyers strike or to appoint an independent enquiry - agency to probe into the disappearance and alleged murder of Kulwant Singh, Advocate and his family. Be that as it may the fact remains that the Five Judge Bench of the High Court was seized of the matter wherein the issues regarding the abduction and alleged murder of Kulwant Singh, Advocate and his family were raised before it. The report of the Action Committee" of the Bar Association, statements recorded by the police including that of Harpreet Singh alias Lucky and other relevant documents were before the High Court. The High Court was wholly unjustified in closing its eyes and ears to the controversy which had schocked the lawyer

fraternity in the Region. For the reasons best known to it, the High Court became wholly oblivious to the patent facts on the record and failed to perform the duty entrusted to it under the Constitution. After giving our thoughtful consideration to the facts and circumstances of this case, we are of the view that the least the High Court could have done in this case was to have directed an independent investigation / enquiry into the mysterious and most tragic abduction and alleged murder of Kulwant Singh, Advocate and his family.

10. We are conscious that the investigation having been completed by the police and chargesheet submitted to the Court, it is not for this Court, ordinarily, to reopen the investigation. Nevertheless, in the facts and circumstances of the present case, to do complete justice in the matter and to instill confidence in the public mind it is necessary, in our view, to have fresh investigation in this case through a specialized agency like the Central Bureau of Investigation [CBI].

##. However, before parting with the judgment, this Court would like to refer the recent observations of the Apex Court which runs as under :

The Apex Court in its decision in case of MAKHAN LAL BANGAL VS. MANAS BHUNIA [2001] 2 SCC 652, para-26.

"An alert Judge actively participating in Court proceedings with a firm grip on oars enables the trial smoothly negotiating on shorter routes avoiding prolixity and expeditiously attaining the destination of a just decision. The interest of the counsel for the parties in conducting the trial in such a way so as to gain success for their respective clients is understandable but the obligation of the Presiding Judge to hold the proceedings so as to achieve the dual objective search for truth and delivering justice expeditiously - cannot be subdued. Howsoever sensitive the subject - matter of trial may be; the court room is no place of play for passions, emotions and surcharged enthusiasm."

In case of GAYA PRASAD V. PRADEEP SRIVASTAVA [2001] 2 SCC 604, PARA-19, the Apex Court as

under :-

"The time is running out for doing something to solve the problem which has already grown into monstrous form. If a citizen is told that once you resort to legal procedure for realisation of your urgent need you have to wait and wait for 23 to 30 years, what else is it if not to inevitably encourage and force him to resort to extra legal measures for realising the required reliefs. A Republic, governed by rule of law, cannot afford to compel its citizens to resort to such extra-legal means which are very often contra-legal means with counterproductive results on the maintenance of law and order in the country."

##. In light of the observations made by the Apex Court and considering the facts and circumstances of the present case, the complainant - the present petitioner who has filed the complaint of commission of crime in his house and he lost three family members and property worth Rs.21 lacs and though more than four years have passed, but yet no real culprits have been traced out by the investigating officer. Therefore, considering all these aspects of the matter and especially considering the fact that when there is nothing on record to show as to what has happened during the progress of the investigation which has been admittedly kept pending and continued by order dated 4th March, 1999 passed by the JMFC, Devgadh Baria, according to my opinion, there seems to be an inaction on the part of the investigating agency and such inaction to probe into the heinous crime taken place in the year 1996 requires interference of this Court in the form of direction to transfer the investigation to some independent agency, would not only certainly meet the ends of justice but would certainly instill confidence to the petitioner so also in the mind of the public.

##. In view of the above discussion, the present petition deserves to be allowed and the same is allowed accordingly. Therefore, it is directed to the CBI to take up the investigation of the case FIR No.I-213/1996 dated 3rd November, 1996 under registered under Section 302, 457, 460 and 114 of IPC with immediate effect. It is further directed to the Senior Superintendent of the concerned police authority - Investigating Officer to assist the CBI in conducting the investigation. The CBI shall exercise all the powers available to it under the Criminal Procedure Code and any other provisions of law.

The State of Gujarat through the Home Secretary is further directed to provide all assistance to the CBI in this respect. However, it is further directed to the CBI to depute a responsible officer to hold the investigation as directed hereinabove and the same may be done within six months from the receipt of this order by the Director and submit its report in accordance with law. Rule is made absolute accordingly.

Date : 29-6-2001 [H.K.Rathod, J.]

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